REMARKS

Claims 16-17, 19-25, 41, 43, 45-47, 49-54, 64, 66, 68-70, 72-79, 83-96, 100-104, 108-112, 114-120, 122-124 and 126-129 are pending in this patent application. Claims 41, 43, 45-47, 49-54, 64, 66, 68-70, 72-79, 83-88, 91, 95-96, 100-104, 108-112, 114-120, 122-124 and 126-129 have been rejected. Claims 45, 68, and 102 have been amended. Claims 16-17, 19-25 and 89-94 have been allowed. Reconsideration of the application is requested.

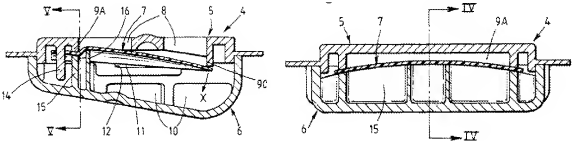
§ 112 Rejection

Claims 45 and 68 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims have been amended to correct claim dependency. Applicants believe that the changes in claim dependency overcome the rejection.

§ 251 Rejection

Claims 47, 49-54, 70, 72-79, 83-88, 95-96, 100-104, 108-112, 114-120, 122-124, and 126-129 have been rejected under 35 USC § 251 for containing new matter. Applicants respectfully submit that this rejection cannot be sustained.

The Examiner maintains the rejection of claim 47 because "a 'portion of the stationary portion that resides in non alignment with the seal surface' cannot be the 'stationary portion' or a portion of the stationary portion' as recited in the claim." Applicants believe that this reason has no pertinence to a new matter rejection and more properly would pertain to a section 112, second paragraph rejection. In any case, the statement is not correct: the flap can have the stationary portion, or a portion of it, in non-alignment with the seal surface. In fact, this is shown in the drawings:



The portion of the flap below block 16, for example, is part of the stationary portion and it is in non-alignment with the seal surface.

The Examiner also states that the "language 'at least a portion' … embraces an embodiment of the invention which includes having any part, including all, of the 'stationary portion to (be) in non alignment with the seal surface' while at the same time, in the same embodiment, having the same "(only one) stationary portion (be held) in a stationary position in contact with the seal ridge." Applicants see nothing wrong with the language. The invention as shown in the embodiment illustrated above shows the stationary portion both in contact with the seal surface and in non-alignment with it as well. The stationary portion makes contact with the seal surface at portion 9A and where portions 9B and 9C meet 9A. It is in non-alignment with the seal surface below block 16.

In regard to claim 70, the Examiner maintains this rejection because the profiled block has two functions. The Examiner states that "[i]t would appear that the claim is attempting to require the same element [block 16] to perform different things within the structure of the valve device for which there is no support in the original Patent and thus is considered to be new matter." As indicated above, the block causes portion of the stationary flap to be in nonalignment with the seal surface. The Examiner acknowledges this fact in stating that "[t]he only part of the flexible flap that resides in non alignment with the seal surface as a result of a member contacting the flap is at the location of profiled block 16." When the flap resides beneath the seal surface, a curvature is imparted into the flap. Thus, the block does do two things: it makes the flap in nonalignment with the seal surface and it imparts a curvature into the flap. There is therefore no issue of new matter here.

With respect to claim 86, this claim has been rejected for containing new matter because "[t]he phrase 'at least' enlarges the scope of the claim to include curvature in directions not transverse to the longitudinal axis such as along askew angles from the longitudinal axis which is outside the scope of the original patent." Applicants take issue with this position. First, applicants are unaware of any requirement in the law which states that the claim language can only cover the embodiments explicitly disclosed in the specification. Here the Examiner does not dispute that there is support for the limitation in question. Applicants cited the support in their previous response. Rather the Examiner takes issue with whether the limitation in question

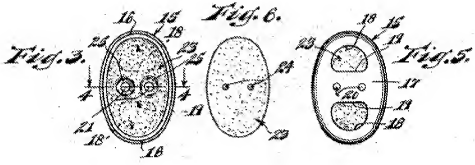
covers embodiments not mentioned in the specification. Unless the Examiner can cite appropriate authority for this position, this rejection should be withdrawn. Secondly, the article described in the specification, albeit not explicitly mentioning askew angles would nonetheless inherently possess curvature in such angles. When a flexible flap is curved longitudinally and transversely, the flap would also exhibit curvature at angles therebetween. This curvature is actually shown in FIG. 4 of the present application. Applicants submit this line of argument in regard to the rejection of claim 122 since it too has been rejected for reasons similar to claim 86.

Claim 95 has been rejected for containing new matter because "[w]hile the block may 'at least in part' accentuate (as originally disclosed) this fixed curvature of the flap 7, the recitation 'at least in part' encompasses embodiments of the invention in which the fixed transverse curvature results from other things such as by structure not disclosed in the Patent." The Examiner states that "[s]uch embodiments, as they are not disclosed in the Patent, are considered new matter." Here again, the Examiner is taking the position that every embodiment covered by added claim language must be disclosed in the specification or else the claim language constitutes new matter. Applicants are unaware of any such requirement in the law and request that the Examiner cite appropriate authority to support this position. Further, although the Examiner states that other non-recited embodiments are covered by the claim, the Examiner has not identified any such embodiments. The applicants submit similar arguments with respect to rejected claims 104, 11, 120, and 122 since they are rejected on similar grounds. Applicants also reassert the arguments furnished in applicants previous response. If the Examiner cannot cite appropriate authority for the position that all embodiments falling within the claim language must be disclosed in the patent, then the rejection should be withdrawn.

§ 102 Rejection

Claims 41, 43, 46, 64, 66, and 69 continue to be rejected under 35 USC § 102(b) for being anticipated by Cover (US 2,105,183). Please note that applicants' claims 41 and 64 requires that the valve have "only one flexible flap" that has "only one free end". and that the flap is "non-centrally mounted." Claim 41 also includes a stationary end and an opposing free end and indicates that the flap is "non-centrally mounted". And claim 64 requires a root end and has the flap mounted in cantilever fashion. Cover does not have a stationary end opposite the free end or

a root end. In Cover, there is no stationary end. Cover is mounted centrally, and therefore is stationary in the center — not at a stationary end. Being mounted in the center, the flap is not mounted in cantilever fashion. The Examiner contends that Cover's valve does have only one flexible flap. In taking this position, the Examiner conceptually cuts the Cover flap in half and states that each half constitutes a flap. Such an interpretation of Cover, however, strains its actual disclosure. As shown below, Cover shows one flexible flap:



This flap is described by Cover as a "movable valve element 23". It has "a pair of apertures 24 adapted to register with pins 20" on a carrying frame 15. The "pins are adapted to act as hinges for the movable valve element 23."[1] Thus the movable valve element or flap 23 bends about its central mounting point at the pins 20 to provide two free ends that lift from the carrying frame. Cover is not showing only one flap that has only one free end and that is non-centrally mounted.

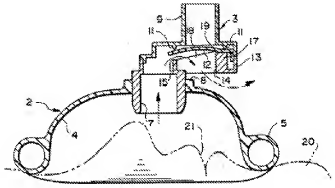
In continuing the rejection, the Examiner admittedly gives a different interpretation to the language "only one flexible flap". The Examiner states that after cutting the Cover valve in half, that "each valve [then] includes a 'stationary (root) end that in fact is mounted to the seat by pins 20" and that "[e]ach valve in fact includes only one 'free end' moveable toward and away from the seal surface." As the Examiner is aware, claims are to be given not simply their broadest construction possible but rather their broadest *reasonable* construction, interpretation, or meaning *consistent with the specification*. Applicants claim language pertaining to "only one free end" cannot be reasonably held to read on a flap that has two free ends. Such would not be reasonable nor consistent with the present specification. Further, the Examiner cannot take a reference and

[1] See U.S. Patent 2,105,183 to Cover at page 1, second column, lines 36-55.

read into the reference subject matter that is not there. Thus, it is not proper for the Examiner to conceptually cut the Cover valve in half and say that there are two separate valves. Cover is only describing one valve, and Cover's one valve has one centrally-mounted flap with two free portions -- not a cantilevered flap with one free end. To state otherwise is to take applicants' disclosure and apply it in hindsight to what is actually shown in Cover. This type of reference interpretation of course is not proper under 35 USC § 102(b). For these reasons, claims 41, 43, 46, 64, 66, and 69 are not anticipated under the meaning of 35 USC § 102(b) by Cover.

§ 103 Rejection

Claims 45 and 68 have been rejected under 35 U.S.C. § 103 (a) for claiming subject matter that would have been obvious to a person of ordinary skill over Cover in view of U.S. Patent 5,295,478 to Baldwin. Applicants respectfully submit that this rejection cannot be sustained. Baldwin describes a resuscitator that has inhalation valve. This inhalation valve is curved in its longitudinal dimension:



Baldwin does not describe an exhalation valve, nor a valve that has a transversely curved flap. The Baldwin valve opens during an inhalation and closes during an exhalation. The force from the exhaled air causes the valve disk 12 to be forced against the knife edge 11. Not only does Baldwin fail to suggest the basic features of the present invention, but it also fails to teach or suggest the subject matter of claims 45 and 68. Baldwin does not show a flexible flap that is mounted to the valve seat by being pressed towards the seat by a member disposed on a valve cover. There is no member on a valve cover that presses the flap towards the valve seat.

Baldwin does not use a valve cover. It uses an inlet tube 9. A person administering the ventilation blows through the inlet tube to resuscitate the victim.

Please reconsider the outstanding rejections in light of the remarks provided above.

Respectfully submitted,

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